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Remarks

The claims have been amended so as to set forth that the performance fiber is chain knitted into said base fabric by a single preselected needle as disclosed on page 8, lines 9-20 of the specification. This type of knit is known in the art as a single knit weft. Also, the unilayer cross stitch construction means that there is no seam. Submitted herewith is a glove currently marketed which has achieved commercial success. Note especially the smooth transition at the base of the thumb crotch.

The Rejection Under 35 U.S.C. 103

Reconsideration is respectfully requested of the rejection of the claims as presently amended under 35 U.S.C. 103(a) as being unpatentable over Andrews et al in view of Weil.

Andrews et al in the drawings and elsewhere use yarns that are continuously interlooped in the lengthwise or longitudinal direction using multiple needles which forms a warp knit. Conventional circular knitting machines using multiple needles cannot form a seamless unilayer.

Note in column 11, lines 62-63 of Andrews et al, "It should be noted that the narrow band 202 is present only because it is necessary for the knitting process." It is necessary because multiple needles are used which knits the front and the back. Multiple needles on a conventional knitting machine as proposed by Andrews et al would leave this band at each region and are not cross stitched. The circular knitting machine for hosiery manufacture is not cross stitched and is of a wrap knit. The seven cut Shima

glove knitting machine forms a warp knit, is not unilayer, is multi-needed and would inherently form a seam.

Andrews et al should also be considered with U.S. Pat. No. 5,965,223 which is also based on Provisional Application Nos. 60/028,317 and 60/028,319. This references refers to top and bottom stitches made on a continuous one-step process so that the fabric formed is not a unilayer weft knit.

Consequently, Andrews et al differs from the presently claimed invention since a multi-needle knit cannot form a seamless, unilayer and cross stitched fabric with two different fibers forming distinct sections.

Reconsideration is respectfully requested of the rejection of the claims under 35 U.S.C. 103 (a) as unpatentable over Andrews et al in view of Weil et al.

Weil et al adds nothing to the teachings of Andrews et al which would lead one in the art of the present invention. Weil et al teach warp knitted fabric with different sections of a cross stitch density. The knitting process of Weil et al uses multiple needles and stretching. Moreover, Weil does not knit on a circular glove knitting machine. There would be no motivation for one skilled in the art to modify Andrews et al to cross stitch on a circular knitting machine. Moreover, warp knitting would not produce the weft knit unilayer fabric of the invention.

Consequently, even if Andrews et al was modified by the teachings of Weil et al, a warp knit and not a weft knit would be formed. Weil et al is seamless only because the yarn density is changed and not the yarn. According to Andrews et al, the use of two different yarns requires the additional section and not yarn density.

Reconsideration is requested of the rejection of claims 2, 4-6 and 10 as presently claimed under 35 U.S.C. 103 as being unpatentable over Andrews et al in view of Weil et al and further in view of Kuehnel.

Claims 2, 4-6 and 10 depend for their patentability on claim 1. Kuehnel adds nothing to the teachings of Andrews et al when combined with Weil et al which lead one in the art to the present invention.

Kuehnel teaches the use of mixed fibers but does not relate to the use of high performance fibers which are found in a common section of a glove that could be knitted with a different fiber or yarn in a unilayer. Kuehnel similar to Andrews et al and Weil teach the use of conventional multi-needle knitting which results in a warp knit. The Examiner errs that a fabric or glove of the invention is obtained. An entirely different glove is formed when a single needle is used to insert the performance yarn into a chain stitched base fabric. Kuehnel does not chain stitch so the resulting yarn would not result having no seams. The combination of Andrews et al, Weil and Kuehnel still would not motivate one in the art to weft knit.

Reconsideration is respectfully requested of the rejection of claims 3, and 7-9 under 35 U.S.C. 103(c) as being unpatentable over Andrews et al in view of Weil and further in view of Sullivan.

It cannot be seen how Sullivan is at all pertinent and can be applied to Andrews et al and Weil to teach the presently claimed invention. Sullivan provides a rib knit tubular member which is multi-layered and stitched separately into a glove. Andrews et al requires a continuous knitting so that Sullivan could not be used. Moreover, Sullivan would require a seam because of the stitching on the tips only of a glove. Sullivan only

teaches tips and not finger sections or isolated sections. The combination of Sullivan would not form a unilayer with Andrews et al. Applicant's invention does not merely relate to the use of performance fibers.

Reconsideration is respectfully requested of the rejection of claims 12, 15 and 16 as presently amended as being unpatentable over Andrews et al in view of Weil and further in view of Inoue et al.

The whole invention as presently claimed includes the features of:

1. Chain stitching, which differs from Weil.
2. Using a single needle to insert the performance fiber. The prior uses multi-needles, and
3. Unilayer construction. The multi-needle prior art form a top and bottom yarn which is not a unilayer.

Inoue teaches rib stitching in column 10. As seen at column 22, lines 22-24, this is merely a conventional method utilizing multi-needles to form a warp knit. The single needle insertion surprisingly provides a unilayer with a chain stitch and not a rib stitch.

Consequently, the rib stitching process of Inoue teaches away from the presently claimed invention.

35 U.S.C. 103 provides that an invention is not patentable if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to persons having ordinary skill in the pertinent art. The Supreme Court has stated that the question of obviousness, under Section 103 is to be determined against the background of three basic factual inquiries:

(1) the scope and content of the prior art is determined;
(2) the differences between the prior art and the claims at issue; and
(30 the level of ordinary skill in the pertinent art is resolved. Graham v John Deere & Co., 383 U.S. 1, 17, 148 USPQ 459, 466-467 (1966).

Applying the three pronged Graham test to the case at hand, it can be seen that the scope and content of the prior art is directed to the use of different knitting methods.

The present claims differ from the prior art by providing the use of a single needle for inserting a performance fiber into a unilayer base fabric, chain stitching to form a unilayer, and weft construction without seams.

The level of skill in the art would be that of an engineer who would follow the conventional method of knitting as taught by the prior art.

Therefore, appellants' invention is patentably distinguishable from the cited art under the test of Graham et al.

The examiner has failed to demonstrate that the whole invention of the appellants was disclosed either alone or in any combination of teachings of record. It is this lack of teaching which disproves the allegations of obviousness under 35 U.S.C. 103 and thus supports patentability to the present invention.

It is the appellants' contention that the Examiner is guided to the rejection under obviousness only after knowing appellants' invention and working backward from this knowledge by trying to fit the teachings of the references to the teachings of the appellants. Even with such a combined teaching, the Examiner has still failed to demonstrate the whole of appellants' invention. Appellants maintain that when the

references are viewed for their actual teaching using conventional procedures without any knowledge of appellants' invention, then the instant claims cannot be considered obvious.

Furthermore, it has been consistently held that a mere showing of the existence of each element of an invention in the prior art, in and of itself, is inadequate to demonstrate obviousness when a combination of those coexisting elements results in novel and unanticipated results. See United States v Adams, 383 U.S. 39, 148 USPQ 479, 483 (1966). Such is the case here as seen by the chain stitched unilayer of both performance fibers and base fabric in a unilayer of a weft construction.

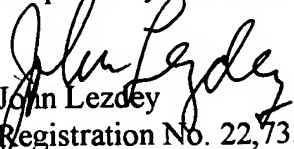
Section 103 expressly mandates that inquiry into patentability must be drawn toward the subject matter as a whole. See Connell v Sears Roebuck & Co., 220 USPQ 193, 199 (Fed. Cir. 1983).

In determining non-obviousness under Section 103, the inquiry is whether the invention as a whole would have been obvious at the time the invention was made; the test is not obvious to try as this disregards the invention as a whole concept.

Reconsideration and favorable action in view of the foregoing are earnestly solicited.

If there are any issues which still remain, the Examiner is requested to telephone the undersigned.

Respectfully submitted,


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